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REMARKS

Claims 15-17 are rejected, under 35 U.S.C. § 103(a), as being unpatentable over Davis et al. '397 in view of Roth '074. The Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the following remarks.

In the Official Action, the Examiner admits that Davis '397 lacks the teaching of an incision being made in the chest and a dialator being used to open the incision. To overcome this deficiency in the base reference, the Examiner applies Roth '074 for its alleged teaching of those missing features. In particular, the thoracoscopic access ports 90 (i.e., trocar sleeves or other tubular cannulae) of Roth '074 are cited by the Examiner as apparently being the equivalent of the claimed feature of "expanding the opening with a dialator (90)". However, as discussed below, the specifically disclosed features of Roth '074 are distinctly different from the presently claimed method.

Roth '074 relates to a device for less invasive intracardiac interventions. In its relevant part, Roth '074 includes a number of thoracoscopic access ports 90. As described in Roth '074, three thoracoscopic access ports 90 are inserted into 2-3 cm incisions made between the ribs on the right lateral side of the patient. The thoracoscopic access ports 90 are used to keep these dermis incisions open and protect the adjacent tissue from trauma as various instruments are inserted into and removed from the chest cavity. Such thoracoscopic access ports 90 are only used for maintaining the size of the hole or the opening but not for expanding the size of the incision, as presently recited. That is, the diameter or size of each thoracoscopic access port 90 remains fix and is not expandible to increase the size of the opening.

It should be noted that the invention of Roth '074 relates to a device which percutaneously closes a hole created in the heart wall, e.g., due to an atrial septal defect and a ventricular septal defect. There is no description concerning use of an occlusion catheter in Roth '074 or that its teaching is applicable or should be combined with or even beneficial for use with the teachings and disclosure of Davis et al. '397.

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According to the specific teachings of Roth '074, the thoracoscopic access ports 90 are placed within incisions that have been cut into the dermis of the patient, as described at column 13, lines 26-50. In contrast, and as presently recited in the pending claims, first the chest of the patient is cut to allow access to the ascending aorta. Then, the aorta is incised creating an opening therein. According to the presently claimed invention, two openings are made and then the opening in the aorta is dilated to allow for insertion of the occlusion catheter therein. The Applicant respectfully submits that the currently claimed invention is distinctly and patentably different from the specific teachings of either Davis et al. '397 and/or Roth '074.

In order to emphasis the above noted distinctions between the presently claimed invention and the applied prior art, the presently pending claims are slightly revised. More specifically, the independent claims now recite the features of "expanding the opening in the ascending aorta with a dilator" and "inserting the occlusion catheter for the ascending aorta, following the expansion of the opening in the ascending aorta, into the ascending aorta through the incision in the chest and the expanded opening in the ascending aorta and fixing the occlusion catheter to the ascending aorta". Such features are believed to clearly and further patentably distinguish the presently claimed invention from all of the art of record, including the applied art of Davis et al. '397 and/or Roth '074. However, if the Examiner believes that any further clarifying amendment to the claims is necessary to place this case in allowable form, the Examiner is courteously solicited to contact the undersigned representative of the Applicant to discuss the same.

The Applicant notes the remaining prior art cited in the official action. As none of that additional art is applied by the Examiner against the claims of this application, the Applicant is not providing any comments concerning the same at this time.

In view of the above amendments and remarks, it is respectfully submitted that all of the raised rejection(s) should be withdrawn at this time. If the Examiner disagrees with the Applicant's view concerning the withdrawal of the outstanding rejection(s) or applicability of the Davis et al. '397 and/or Roth '074 references, the Applicant respectfully requests the Examiner

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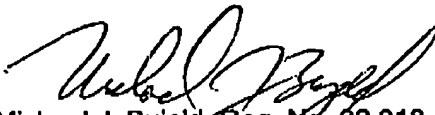
to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at this time. Alternatively, if the Examiner is relying on his expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

In view of the foregoing, it is respectfully submitted that the raised rejection(s) should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,



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